

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020

Subsection 477(1) of the *Biosecurity Act 2015* (the Act) provides that during a human biosecurity emergency period the Health Minister may determine any requirement that he or she is satisfied is necessary:

- to prevent or control the entry, emergence, establishment or spread of a listed human disease in Australian territory; or
- to prevent or control the spread of the listed human disease to another country; or
- to give effect to a recommendation made to the Health Minister by the World Health Organization (WHO) under Part III of the International Health Regulations.

On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘Human coronavirus with pandemic potential’ (COVID-19) (section 475 of the Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is in force for 3 months. It ceases 18 June 2020, unless extended by the Governor-General.

Following this, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (the Determination) has determined a restriction on outbound travel for Australian citizens and permanent residents.

This Determination is in response to the COVID-19 pandemic, which continues to represent a severe and immediate threat to human health in Australia and across the globe, and it has the ability to cause high level of morbidity and mortality and to disrupt the Australian community socially and economically. As worldwide case numbers of the COVID-19 increase, and the countries reaching the peak of their epidemic curve change, it is impossible to manage the risk of imported case through targeting specific countries. This is consistent with the Level Four “do not travel” advisory issued by the Department of Foreign Affairs and Trade.

In accordance with section 477 of the Act, the Health Minister has determined that an Australian citizen or permanent resident must not travel outside of Australia (by air or sea or the operator of an outgoing aircraft or vessel), unless an exemption is granted to them (set out in sections 6 and 7 of the Determination). The Determination commences at 12.00pm on 25 March 2020 and is in force for an initial period of 4 weeks. A further revision of this arrangement can occur towards the end of the period to assess whether it continues to be necessary.

A person who fails to comply with the Determination may commit a criminal offence (imprisonment for maximum 5 years, or 300 penalty units).

The Determination is not a legislative instrument within the meaning of section 8(1) of the *Legislation Act 2003*.

The Director Human Biosecurity (who is also the Commonwealth Chief Medical Officer), and the Secretary of the Department of Home Affairs, have advised the Health Minister, and the Health Minister is satisfied, that the outbound travel restriction is necessary to prevent or control the entry, emergence, establishment or spread of a COVID-19 in Australian territory and abroad.

Before making an emergency requirement or giving a direction, the Health Minister must also be satisfied, and the Health Minister is satisfied, that the requirement or direction:

- is likely to be effective in, or contribute to, achieving its purpose;
- is appropriate and adapted to its purpose; and
- is no more restrictive or intrusive than required in the circumstances, including, for a requirement, in the manner in which it is to be applied.

In addition to being satisfied of the above effectiveness and proportionality matters, the Health Minister must also set a suitable period for a particular requirement or direction to remain in force. This must be no longer than necessary, and at any rate cannot exceed the human biosecurity emergency period.

The effectiveness and proportionality of the outbound travel restriction, and its period (4 weeks subject to further review), is supported by the Director of Human Biosecurity, and the Secretary of the Department of Home Affairs.

The outbound travel restriction commences at 12.00pm on 25 March 2020 and is in force for a period of 4 weeks.

Background

On 5 January 2020, the WHO notified Member States under the *International Health Regulations (2005)* (IHR) of an outbreak of pneumonia of unknown cause in Wuhan city, China. The pathogen is a novel (new) coronavirus. On 21 January 2020 ‘Human coronavirus with pandemic potential’ became a ‘listed human disease’ by legislative instrument made by the Director of Human Biosecurity under the Act. On 30 January 2020, the outbreak was declared by the WHO International Regulations Emergency Committee to constitute a Public Health Emergency of International Concern.

On 11 February 2020, WHO announced that the International Committee on Taxonomy of Viruses named the pathogen virus ‘severe acute respiratory syndrome coronavirus (SARS-CoV-2)’. It is closely related genetically to the virus that caused the 2003 outbreak of Severe Acute Respiratory Syndrome (SARS). The international name given by WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19).

COVID-19 has entered Australia and continues to spread. It represents a severe and immediate threat to human health in Australia as it has the ability to cause high levels of morbidity and mortality and to disrupt Australian community socially and economically.

On 17 February 2020 the Australian Health Protection Principal Committee (AHPPC) endorsed the Australian Health Sector Emergency Response Plan (Health Sector Emergency Plan). On 27 February 2020, the Prime Minister of Australia announced the Australian Government had endorsed and activated the Health Sector Emergency Plan. The Prime Minister noted the rate of transmission of the virus outside mainland China, and the indications that the world will soon enter a pandemic phase of the listed human disease. On 11 March 2020 WHO declared the outbreak of COVID-19 a pandemic. The Prime Minister

has announced a series of emergency measures since 13 March 2020 and includes the outbound travel restriction as determined by the Health Minister.

Emergency requirements

An emergency requirement is a non-disallowable legislative instrument (s 477(2)).

The requirements that the Health Minister may determine include: requirements that apply to persons, goods or conveyances when entering or leaving specified places; requirements that restrict or prevent the movement of persons, goods or conveyances in or between specified places; and requirements for specified places to be evacuated (s 477).

These emergency powers may override any Commonwealth, state or territory law (ss 477(5) and 478(4)) although state and territory officials cannot be directed without agreement (s 478(5)). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (ss 477(6) and 478(6)).

The Australian Government has established protocols for the exercise of emergency powers under the Act to ensure that the emergency powers are only used where necessary to protect the health of Australians, based on expert advice and following appropriate consultation.

To ensure that the Determination is in place to address emergency human biosecurity risk, the Determination commences at 12.00pm on 25 March 2020 and is in force for a period of 4 weeks.

Consultation

The outbound travel restriction is supported by advice from the Director of Human Biosecurity, and the Secretary of the Department of Home Affairs.

The requirement is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for the requirement to be non-disallowable to ensure that the Commonwealth is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health.

The Determination is not a legislative instrument within the meaning of section 8(1) of the *Legislation Act 2003*.

A provision by provision description of the requirements is contained in the Attachment.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020

Part 1 - Preliminary

1 Name

Section 1 provides for the Determination to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (the Determination).

2 Commencement

Section 2 provides that the Determination commences at 12pm on 25 March 2020.

3 Authority

Section 3 provides that the Determination is made under subsection 477(1) of the *Biosecurity Act 2015* (the Act).

4 Definitions

Section 4 provides that a number of expressions used in the Determination are defined in the Act, including Australian territory; operator; passenger.

Section 4 also provides that in the Determination defines the following terms:

- ‘Australian Border Force’ has the same meaning as in the *Australian Border Force Act 2015*;
- ‘Australian citizen’ has the same meaning as in the *Australian Citizenship Act 2007*;
- ‘Australian Defence Force’ has the same meaning as in the *Defence Act 1903*;
- ‘member’ has the same meaning as in the *Defence Act 1903*;
- ‘permanent resident’ has the same meaning as in the *Australian Citizenship Act 2007*.

Part 2 - Requirements

5 Person not to travel outside Australian territory after 12pm, 25 March 2020

Section 5 provides that an Australian citizen or permanent resident (the person) must not leave Australian territory on or after the time the Determination commences (12pm on 25 March 2020) unless:

- an exemption as set out in section 6 of the Determination applies to the person;
- or an exemption is granted to the person by an APS employee in the Australian Border Force under section 7 of the Determination.

6 Exemptions

Section 6 provides an exemption to the travel restrictions requirements under section 5 of the Determination to the following persons:

- a person ordinarily resident in a country other than Australia;
- a person who is member of the crew of an aircraft or vessel (other than an outgoing aircraft vessel) or if a worker associated with the safety or maintenance of the aircraft or vessel;
- a person engaged in the day to day conduct of inbound and outbound freight;

- a person whose travel is associated with essential work at an offshore facility;
- a person who is travelling on official government business (including a member of the Australian Defence Force).

7 Exemptions—granted by an APS employee in the Australian Border Force

Section 7 provides that exceptional circumstances, an APS employee in the Australian Border Force may grant an exemption to:

- An Australian citizen;
- A permanent resident;
- An operator of an outgoing passenger aircraft or vessel.

The section provides that exceptional circumstances are demonstrated by the Australian Citizen, permanent resident or operator providing a compelling reason for needing to leave Australian territory.

This section also provides that an exemption made under this section must be in writing.